

# Agenda

## Item #6



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners

From: Benjamin Dyer, Political Committee and Lobbyist Registrar

Date: October 20, 2014

Re: Request for Waiver of Penalty by the Committee for a Healthier, More Prosperous Maine BQC

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The Committee for a Healthier, More Prosperous Maine BQC (the BQC) was formed by the Jackson Laboratory to support passage of bond Question 4 on the November 4, 2014 ballot. Beginning on July 29, 2014, the BQC began engaging contractors to provide polling and analysis, website production, and video work in order to support Question 4. The organization was required to register and file its initial campaign finance report by August 5, 2014. It registered and filed its first report 21 days late on August 26, 2014. The BQC did not recognize that entering into an agreement or promising to pay for services constitutes an "expenditure" which can trigger BQC status. The preliminary penalty is \$4,330.20. The Commission staff recommends reducing it to \$250.

## LEGAL REQUIREMENTS

Under Maine law, an organization which does not qualify as a PAC must register with the Commission as a BQC and file an initial campaign finance report within 7 days of receiving contributions or making expenditures greater than \$5,000 to influence a ballot question campaign. (21-A M.R.S.A. §§ 1056-B & 1059) The term "expenditure"

includes, among other things, “A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph.” (21-A M.R.S.A. §1052(4)) If a BQC is late in filing a campaign finance report, the amount of the penalty is set by a formula which takes into consideration the amount of the transaction, the number of prior violations within a two-year period, and the number of days the report is late. (21-A M.R.S.A. § 1062-A(3))

## **DISCUSSION**

The BQC exceeded \$5,000 in expenditures on July 29, 2014, when it contracted for \$18,100 in polling services from Pan Atlantic Consultants. It was required to register and file a report on August 5, 2009. The BQC registered and filed its initial campaign finance report on August 26, 2014. Personnel from the Jackson Laboratory had called the Commission to discuss campaign finance reporting responsibilities, but the topic of reporting unpaid obligations did not come up during the conversation. The BQC was also late in reporting a contract for website creation services with a value of \$2,520 from Lighthouse Web Solutions on August 15<sup>th</sup>.

The preliminary penalty amount is \$4,330.20, calculated as follows:

<b>Transactions</b>	<b>Date</b>	<b>Financial Activity</b>	<b>Penalty Rate</b>	<b>Days Late</b>	<b>Preliminary Penalty</b>
Obligations to Pan Atlantic Consulting and Lighthouse Web Services	7/29/2014	\$20,620	1%	21	\$4,330.20

### **REQUEST BY THE BQC**

The BQC asks that the Commission waive the penalty because it is disproportionate to the experience of the BQC's treasurer and the harm to the public caused by the late filing.

The BQC explains that it was unaware that the statutory definition of expenditure includes entering into an agreement or promising to make a payment for services.

### **STAFF RECOMMENDATION**

The Jackson Laboratory is not active in electoral politics, compared to other organizations regulated by the Commission (PACs and party committees). The Commission staff sees no reason to doubt the BQC's explanation that it simply misunderstood that obligations can trigger a duty to register and file financial reports as a BQC. The organization now understands the definition of expenditure and has been careful to include obligations in subsequent reports. While the registration and initial campaign finance report were late by 21 days, all transactions were filed in August, more than 60 days before the election. The Commission staff believes that the preliminary penalty of \$4,330.20 is disproportionate to the harm to the public. We recommend reducing the penalty to \$250.

Thank you for your consideration of this memo.

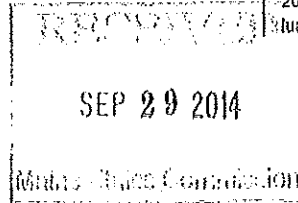


**The Jackson  
Laboratory**

*Leading the search  
for tomorrow's cures*

**LuAnn Ballesteros**

Director, Government Relations  
207.288.6306 f | 207.288.6637 t  
luann.ballesteros@jax.org



September 24, 2014

Attn. Benjamin Dyer  
Maine Commission on Governmental  
Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333

**Re: Request for Waiver of Penalty for Late Filing of Initial Campaign Finance Report**

Dear Mr. Dyer,

I received your letter dated September 17, 2014, notifying me that the Commission staff has made a preliminary determination that the Committee for a Healthier More Prosperous Maine BQC (the BQC), was late in filing its Initial Campaign Finance Report.

After carefully considering the circumstances and the response options made available by the Ethics Commission, the Committee for a Healthier More Prosperous Maine respectfully requests a waiver of the assessed penalty, based on mitigating circumstances including the level of experience of the person filing the report and the harm suffered by the public from the late disclosure.

As you know from our conversations in the weeks prior to the establishment of the BQC, The Jackson Laboratory has never participated in a BQC or filed a report on behalf of a BQC. In reviewing the statutory requirements in 21-A § 1056-B that are hosted on the Ethics Commission's website, I mistakenly interpreted the word "expenditures" as in "expenditures aggregating in excess of \$5000" to mean money spent rather than contractual commitments made. Accordingly, the date of the Initial Report was based on purchase order dates that initiated payments, rather than contract dates that initiated an obligation to pay.

With respect to the harm suffered by the public from the late disclosure, the report clearly identified the contract dates and the error was immediately obvious to you when you received the electronic filing. Given the complete lack of subterfuge related to the information included in the report and the prompt amendment made to the filing, I am hopeful the Commission Board will find the harm suffered by the public from the late disclosure to be procedural rather than actual harm.

At the time of the filing on August 26, 2014, I believed that the BQC's report to be complete, factual and timely. With your kind assistance, I now understand the error in interpreting the statutory timeline for filing and I am committed to filing subsequent reports to the Ethics Commission in full compliance with the State's requirements.

I welcome the opportunity to expand upon the circumstances that led to the BQC's late filed report and apologize for the additional work required by the Commission Staff and the Board, in considering this request for a waiver.

Sincerely,

LuAnn Ballesteros  
Treasurer, Committee for a Healthier, More Prosperous Maine

[www.jax.org](http://www.jax.org)

610 Main Street, Bar Harbor, ME 04609 | 207.288.6000



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

September 17, 2014

Ms. LuAnn Ballesteros, Treasurer  
Committee for a Healthier, More Prosperous Maine BQC  
600 Main Street  
Bar Harbor, ME 04609

Re: Late Filing of Initial Campaign Finance Report – Revised Notice

Dear Ms. Ballesteros,

The Commission staff has made a preliminary determination that the Committee for a Healthier, More Prosperous Maine BQC (the BQC) was late in filing its Initial campaign finance report. The report was due by 11:59 p.m. on August 5, 2014, but was not filed until August 26, 2014. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A(3)). The preliminary penalty amount for the late filing of your report is \$4,330.20. (Please refer to the enclosed penalty matrix for the calculation.) If you agree to pay the penalty, please use the enclosed billing statement.

The BQC may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the BQC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that the PAC made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Please call me at (207) 287-6221 or send me an email at [benjamin.p.dyer@maine.gov](mailto:benjamin.p.dyer@maine.gov) if you have questions.

Sincerely,

Benjamin P. Dyer  
Political Committee and Lobbyist Registrar

Ms. LuAnn Ballesteros, Treasurer  
Committee for a Healthier, More Prosperous Maine BQC  
600 Main Street  
Bar Harbor, ME 04609

The Commission staff has calculated a preliminary penalty amount for the late filing of your Initial campaign finance report. Please pay the penalty or request a waiver within 14 days of receiving this notice. If the Commission does not receive a payment or waiver request, the Commission will send you a final notice requesting payment within 30 days.

To pay the penalty, submit a check or money order to the address below, along with the bottom half of this letter. Or you can pay on-line. If you would like to request a waiver of the preliminary penalty, please see the instructions included in the attached letter.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay a late-filing penalty. If you have questions, please call Benjamin Dyer at (207) 287-6221.

Cut Along Dotted Line

For Office Use Only:  
Account: MCGEEP

To: Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333

From: Ms. LuAnn Ballesteros, Treasurer

RE: Penalty for late filing of Initial Campaign Finance Report

BQC: Committee for a Healthier, More Prosperous Maine BQC

Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

Please Make Check or Money Order Payable to Treasurer, State of Maine  
Or Pay Online at <http://www.maine.gov/online/ethics/penalties>

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
PENALTY MATRIX FOR LATE BALLOT QUESTION COMMITTEE REPORT FILINGS**

**BASIS FOR PENALTIES  
21-A M.R.S.A. Section 1062-A**

**Committee Name:** Committee for a Healthier, More Prosperous Maine BQC  
**Report Title:** Initial  
**Due Date:** 8/5/2014  
**Filed Date:** 8/26/2014  
**Previous Violation(s):** 0

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%  
 For the second violation, 3%  
 For the third and each subsequent violation, 5%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the BQC's report two (2) days late. The BQC has not had any previous late violations this biennium. The BQC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is			
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	Contributions / Expenditures:	\$20,620
		X	
		Percent Prescribed:	1%
X .01	Percent prescribed for first violation		\$206.20
		X	
\$25.00	One percent of total contributions	Number of days late:	21
X 2	Number of calendar days late		
		Total penalty accrued:	\$4,330.20
\$50.00	Total Penalty		

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

**MAXIMUM PENALTIES  
21-A M.R.S.A. Section 1062-A(3)**

\$10,000 for Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports,  
 except that if the financial activity reported late exceeds \$50,000,  
 the maximum penalty is one-fifth of the amount reported late.



is used by the political action committee to initiate or influence a campaign.  
[2011, c. 389, §28 (AMD).]

[ 2011, c. 389, §§27, 28 (AMD) .]

**4. Expenditure.** The term "expenditure:"

A. Includes:

(1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and

(3) The transfer of funds by a political action committee to another candidate or political committee; and [2011, c. 389, §29 (AMD).]

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee, candidate or the spouse or domestic partner of a candidate;

(2) Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

(4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$250 with respect to any election;

(5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election; and

(6) Any communication by any political action committee member that is not made for the purpose of influencing the nomination or election of any person to state or county office. [2013, c. 334, §18 (AMD).]

[ 2013, c. 334, §18 (AMD) .]

## 21-A M.R.S.A. § 1056-B. BALLOT QUESTION COMMITTEES

A person not defined as a political action committee who receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign as defined by section 1052, subsection 1, shall file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to influence the nomination or election of a candidate. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign. The commission must prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee. [2011, c. 389, §38 (AMD); 2011, c. 389, §62 (AFF).]

**1. Filing requirements.** A report required by this section must be filed with the commission according to the reporting schedule in section 1059. After completing all financial activity, the committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The committee shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5.

[ 2009, c. 190, Pt. A, §20 (AMD) .]

**2. Content.** A report must contain an itemized account of each expenditure made to and contribution received from a single source aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; the name and address of each contributor, payee or creditor; and the occupation and principal place of business, if any, for any person who has made contributions exceeding \$100 in the aggregate. The filer is required to report only those contributions made to the filer for the purpose of initiating or influencing a campaign and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

[ 2011, c. 389, §39 (AMD) .]

**2-A. Contributions.** For the purposes of this section, "contribution" includes, but is not limited to:

A. Funds that the contributor specified were given in connection with a campaign; [2009, c. 524, §10 (AMD) .]

B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign; [2011, c. 389, §40 (AMD) .]

C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient's activities regarding a campaign; and [2011, c. 389, §41 (AMD) .]

D. Funds or transfers from the general treasury of an organization filing a ballot question report. [2007, c. 477, §4 (NEW) .]

[ 2011, c. 389, §§40, 41 (AMD) .]

**3. Forms.** A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

[ 1999, c. 729, §8 (NEW) .]

**4. Records.** A person filing a report required by this section shall keep records as required by this subsection for 4 years following the election to which the records pertain.

A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating or influencing a campaign and all expenditures made for those purposes. [2011, c. 389, §42 (AMD) .]

B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50. [2007, c. 477, §4 (NEW) .]

[ 2011, c. 389, §42 (AMD) .]

#### SECTION HISTORY

1999, c. 729, §8 (NEW). 2007, c. 477, §4 (AMD). 2009, c. 190, Pt. A, §20 (AMD). 2009, c. 366, §7 (AMD). 2009, c. 366, §12 (AFF). 2009, c. 524, §8-13 (AMD). 2011, c. 389, §§38-42 (AMD). 2011, c. 389, §62 (AFF) .

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## 21-A M.R.S.A. § 1062-A. FAILURE TO FILE ON TIME

**1. Registration.** A political action committee required to register under section 1052-A or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

[ 2013, c. 334, §30 (AMD) .]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §9 (AMD).]

B. An error by the commission staff; or [1999, c. 729, §9 (AMD).]

C. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2007, c. 443, Pt. A, §38 (AMD).]

[ 2009, c. 190, Pt. A, §29 (AMD) .]

**3. Basis for penalties.** The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [1995, c. 483, §21 (NEW).]

B. For the 2nd violation, 3%; and [1995, c. 483, §21 (NEW).]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (NEW).]

Any penalty of less than \$10 is waived.